**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1210 (S/S) year 2003

Matlub Ali

Vs.

State of Uttaranchal and another.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 8.10.2003 Initial of Judge

Note- Bench Reader will attach this at the top of the first

page of the judgment when it is put up before the Judge for Signature.

**HIGH COURT UTTARANCHAL AT NAINITAL**

Writ Petition No. 1210/2003 S/S

Matlub Ali aged 54 years
S/o Late Mahboob Ali
R/o Sub-Jail Haldwani Tehsil
District Nainital .... Petitioner.

Versus.

1. State of Uttaranchal
   Through Inspector General Jails
   Dehradun
2. Superintendents Sub Jail Haldwani
   District Nainital ... Respondents.

Dated 8.10.2003

**Hon'ble Mr. Rajesh Tandon, J.**

Heard Sri Jagdish Prasad learned counsel for the petitioner and Sri B.D. Kandpal, learned Standing Counsel for respondents.

By means of the present petition, the petitioner has challenged the order dated 29.9.2003 by which the petitioner has been asked to vacate the Government accommodation.

Brief facts giving rise to the petition are that the petitioner was working as a Jail Guard (Bandi Rakshak) in sub-jail Haldwani from where he was transferred to district jail Haridwar in the month of February, 2003. He had already taken charge in the month of March, 2003 at Haridwar.

The grievance of the petitioner is that he is posted at a remote area and there is no proper arrangement for the study and education of children therefore he is unable to shift his family at Haridwar.

The petitioner has referred the letter dated 2.7.2003 issued from the Superintendent sub-jail Haldwani requiring the petitioner to vacate the accommodation occupied by him in sub jail Haldwani failing which penal rent as detailed below will be charged:

10% of Basic Salary in the Ist month

20% of Basic Salary in the IInd month

30% of Basic Salary in the IIIrd month.

The petitioner after receiving the aforesaid letter represented to the respondent No. 2 Superintendent sub-jail district and has stated that his son is studying in class 11th at Saint Paul's School Kathgodam and two children are studying in Parwatiya Sishu Nikatan Haldwani and as such, it will not be possible for him to shift the children at Haridwar as there is no proper facilities of education as he is posted in a remote area.

Following rules regarding the penal rent – market rent has been framed under Rule 45 of the Fundamental Rules Vol. –II relating 'fixation and recovery of rent residences' it reads as under:

*''5–(क) किसी पद का पदधारी ,जिसे आवास आबण्टित किया गया हो, अपने स्थानान्तरण पर कार्य भार ग्रहण करने के लिये दिये गये समय ( उसे अनुमन्य यात्रा समय को छोडकर ) से पहले आवास खाली कर देगा। कार्य भार ग्रहण करने के लिये दी गई अवधि से बाहर, जैसा कि ऊपर बताया गया ह।, उसे आवास पर कब्जा बनाये रखने की अनुमति निम्नलिखित किराया देने पर दी जा सकती है–*

*(1) मूल नियम 45 (क)(4) (ख) के अधीन स्थानन्तरण के दिनांक से एक माह के लिये सामान्य किराया*

*(2) अगले दो माह के लिये आवास का मानक किराया*

*(3) इसके बाद के माह के लिये मानक किराये का दो गुना तथा*

*(4) अनुवर्ती अवधि के लिये मानक किराये का तिगुना।*

*(ख) तथापि कार्य ग्रहण काल के बाहर कब्जा बनाये रखने की दषा में, जैसा कि उप्पर दिये गये उपपैरा (क) में उल्लिखित है ,यदि*

*अनुमति प्राप्त नही की जाती है अथवा स्वीकति नही दी जाती है, तो कब्जा अनधिकृत होगा और पदाधिकरी के रूिध तदविषयक विविध के अनुसार कार्यवाही की जा सकेगी।''*

The petitioner, therefore, can be accommodated if he is prepared to pay the rent in accordance with the aforesaid Rules.

Sri B.D. Kandpal has opposed the prayer and has stated that he has to accommodate the person who has taken charge in place of the petitioner.

The petitioner was transferred in February, 2003 and since then no steps have been taken by the respondents to get the accommodation vacated from the petitioner.

In view of the above, the respondents are at liberty to claim penal rent/market rent from the petitioner for occupying the house even after his transfer.

However, looking to the equitable point of view, it will be proper if the petitioner is given liberty to vacate the premises by 31st December, 2003.

The petitioner undertakes to vacate the accommodation on or before 31 December, 2003. The petitioner shall also pay the admissible rent.

With these observations, the Writ Petition is dismissed. There will be no order as to costs.

**(Rajesh Tandon, J.)**

Dated: 8.10.2003
Rawat